

United States District Court
For the District of Massachusetts

Daniel Baucicault Jr.

(Petitioner)

V.

Commonwealth

Civil Action

NO

FILED

OFFICE

NOV 16 P 4:53

U.S. DISTRICT COURT
DISTRICT OF MASS.

Writ

Now comes the petitioner, Daniel Baucicault Jr.
Pursuant to 28 U.S.C. § 2255. Urging this Honorable court
to Dismiss, strike, or set aside conviction based upon
unconstitutional entry of guilty plea in Roxbury District
Court docket # 002CR005963. Substantial grounds for
petitioner's petition are set out fully in attached affidavit,
Which hereby made to be part of this motion.

Jurisdiction

This Honorable court has jurisdiction over
this matter pursuant to 28 U.S.C. § 2255. Petitioner
is in custody for an act done or committed in
pursuance

of an act of congress. And Such custody is in violation of the Constitution and laws threatics of the United States.

Facts

On June 13, 2001. Petitioner pled guilty to an assault and battery. Petitioner's plea was a combination of two factors; (1) Petitioner was Coerced by his defense counsel. (2) Petitioner was already serving a sentence for unrelated offense and so the incentive was there to take a concurrent sentence, which was a violation of Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States of America. Petitioner asserts that prosecution ~~pr~~ and his defense counsel withheld exculpatory evidence 5 1/2 months prior to the guilty plea. Defense attorney had sufficient time to prepare defense, he failed to do so.

Legal Arguement

Petitioner asserts that his defense counsel representation did not satisfy the Sixth Amendment Standard of Effective assistance of counsel. The right to counsel is the right to the Effective assistance of counsel. In Massachusetts ineffective assistance of counsel is determining when the behavior of counsel falls measurably below which might be expected from an ordinarily fallible lawyer, and whether that

behavior has likely deprived the defendant of an otherwise available, substantial ground for defense. See Commonwealth v. Saferian 366 MASS. 89, 96 (1974), Com v. Duquette 386 MASS. 834, 845-46, 438 N.E. 2d 334, 342-43 (1982), Com v. Lewis 399 MASS. 761, 506 N.E. 2d 891 (1987).

Such a situation would occur, for example when an attorney neglects to raise the issue of a police failure to advise a defendant of his Miranda rights. Here we have the failure to investigate the only defense the defendant has, failure to interview a potential trial character witness, meet with him for a sufficient period of time to develop a defense or investigate the complaint's background, and absenting himself from crucial piece of exculpatory evidence. As a result the defense counsel deprived the petitioner from the benefit of trial by jury. Which is guaranteed by the Constitution of the United States. Constituted to no representation at all. In violation of the Sixth Amendment.

Eventhough there may have been sufficient evidence, which there was ~~not~~ no evidence. Apart from coerced confession, to support a judgment of conviction, the admission in evidence, over objection, of coerced confession vititates judgment because it violate due process clause of fourteenth Amendment.

Petitioner says futher during the preliminary hearings leading up to the plea, the prosecution never introduced any witness(es) and there was no probative evidence linking Mr. Baucicault to the crime

besides her allegation to the police, which she later recanted. (See enclosed documents)

According to petitioner's defense counsel "we don't have enough evidence to go to trial and the judge is going to find you guilty regardless because you're Black, and he will sentence you to two and half years on and after. So my best advice to you is you plead guilty to a concurrent sentence", which was in violation of the safeguards of the Sixth Amendment of the United States Constitution.

The petitioner had no knowledge of the criminal procedure and had no reason not to believe his defense counsel. The petitioner's will was overborne at time that he pled guilty to a crime that was never occurred by the petitioner. Petitioner did not voluntarily preserved his constitutional rights and his conviction's rested upon inadequate.

This Honorable court should grant him relief because of grave doubt whether conviction could stand if measured against mandate of the due process clause of 14th Amendment to Federal Constitution U.S.C.A Const. Amendment 14.

Petitioner assert that serious issues as to adequacy of appointed counsel's interest in preparing and conducting defense thereby depriving defendant of Effective Assistance of Counsel. It would be in the interest of justice that the defendant's substantial showing

on an issue of constitutional importance (the effective assistance of counsel be heard. see Rom v. Stewart, 388 MASS. 253, 257-58, 418 N.E.2d 1219 (1991))

Even though the petitioner had already served his sentence on record providing strong evidence of guilty and retrial would waste time and cause expense, effective assistance of counsel is such an important right that the court is not entitled to assume merely because there was such substantial support for conviction. That defendant was adequately represented by counsel and if on remand, courts find that there such conflict of interest as to prejudice defendant in his defense, conviction must be vacated and tried again. See Morgan v. United States (1968), 422 Conn 396 F.2d 110.

The Petitioner is entitled to hearing regarding conduct of his defense, to determine whether he had recieved advice and effective assistance of counsel sufficient to afford him quality of representation guaranteed by the Sixth Amendment, where it appeared that 5 1/2 months prior to the guilty plea, counsel withheld exculpatory evidence from the petitioner and coerced the petitioner into pleading guilty. Petitioner was deprived of Effective assistance of counsel, and due process. As it stated in the Morgan case by the United States Supreme Court, "the court must inquire fully into all the circumstances of a defendant's representation

Finally, petitioner unequivocally asserts that he is being held without bail by Department of Homeland Security / Immigration Customs Enforcement (DHS/ICE) as ramification for the plea bargain.

The petitioner prays that:

1. The court affords him counsel to represent him in preparation and presentation of his
2. The court reopen and/or reconsider granting him a new trial in which he and his court appointed counsel may appear and present arguments in support of his
3. The court grant him any other relief that deem necessary.

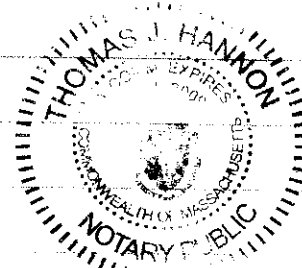
Respectfully Submitted,

[Signature]

Dated: 12-15-04

On this 13 day of December, 2004, before me, the undersigned notary public, personally appeared Daniel BAURICAULT, who proved to me through satisfactory evidence of identification, to be the person whose name is signed on the proceeding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.

Thomas J. Hannon
Thomas J. Hannon, Notary Public
My commission Expires: May 1 2009



United States District Court
For the District of Massachusetts

Daniel Baucault Jr.

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Petitioner's Affidavit

The petitioner, according to law being duly sworn, deposes and says that the following is the true and accurate statement of fact:

1. I am presently being detained by the (DHS/ICE) at the Plymouth County Correctional Facility.

2. I would like to address the honorable court that I didn't commit the alleged crime. My estranged girlfriend, of whom we have a child together was just upset with me because I had served my ties with her and also refrained myself from my son's obligation altogether out of

Spite she lied to Boston Police officers in order to get back at me.

3. There's no doubt in my mind, that serious errors occurred in the conduct of the pre-trial. In violation of my Constitution rights.

4. For the following reasons, I request an opportunity to retract my guilty plea. My attorney informed me that the judge will find me guilty regardless because of my color. And he will sentenced me to a 2 1/2 on and after. He had also advised me to plead guilty to a concurrent sentence. I was to admit to sufficient facts, and the judge ~~will~~ would enter a guilty finding.

5. I followed my attorney's advice and made the admissions. I was found guilty and sentenced.

6. My attorney never made it clear to me that I was giving up my right to a trial at which I would be acquitted unless the prosecutor proved my guilty beyond a reasonable doubt. He intentional sabotage my case altogether.

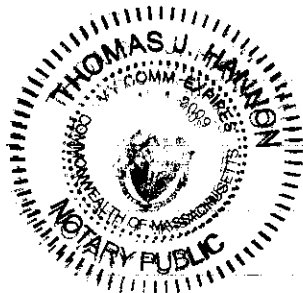
7. My will was overborne at the time I pled guilty. I did not voluntarily preserved my Constitutional right.

8. I did not fully understand the consequences of pleading guilty.

Signed under the pains and penalties of perjury.

Dated: 12-15-04

David Baucicault



On this 13 day of December, 2004, before me, the undersigned notary public, personally appeared DAVID BAUCICAULT, proved to me through satisfactory evidence of identification, to be the person whose name is signed on the proceeding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.

Thomas J. Hannon
Thomas J. Hannon, Notary Public
My commission Expires: May 1 2009



Roxbury District Court
85 Warren Street
Roxbury, MA 02119

Telephone (617) 445-8618

The Commonwealth of Massachusetts

DISTRICT ATTORNEY OF SUFFOLK COUNTY

2004 DEC 16 4 33 PM
RALPH O. MARTIN, III

U.S. DISTRICT COURT
DISTRICT OF MASS

1/8/01

Today, January 8, 2001, I spoke with Sabine Petion (DOB 5/2/78) regarding the case of the Commonwealth v Daniel Boucicault (Docket # 00-5983). Ms. Petion stated to me that she had lied to police officers about this incident. Ms. Petion stated that the alledged defendant, Daniel Boucicault, in this matter was not the man who beat her. Ms. Petion also stated that Mr. Boucicault was not in the area at the time of the attack. Ms. Petion stated that she blatantly lied to Boston Police Officers in order to get back at Mr. Boucicault. Mr. Boucicault is the father of Ms. Petion child + does not aid in the rearing of the child in any manner. Ms. Petion stated that the information in Boston Incident Report #000637856 was false regarding the defendant.

I, Sabine Petion attest that the above statements are a true and accurate account of my conversation with Investigator Peterson

1/8/2001 Date

Respectfully Submitted,

Kenneth Peterson
Criminal Investigator, SCDAD

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS.
ROXBURY DISTRICT COURT
DOCKET NO. 0002CR005963
2004 DEC 16 P 4: 33
COMMONWEALTH
VS.
DANIEL BAUCICAULT

AFFIDAVIT

1. My name is **SABINE PETION** and I used to live at 76 latimore road, Roxbury, Massachusetts.
2. On November 16,2000 I was assaulted outside of my home.
3. The person who assaulted me came up from behind and I never really got a good look at the person.
4. When the Police came I did not understand their questions because at that time I did not speak English very well and therefore when they ask me who had done it I gave them a couple of names of people who might have done it.
5. At no time did I ever speak to a District Attorney or testify in court that it was DANIEL BAUCICAULT who did this.
6. At the time of the incident I was upset with Mr. BAUCICAULT because he was not involved with our child's life.
7. I no longer have a relationship with Mr. BAUCICAULT. I now live alone with my child, but I do not want to see him in jail for something I don't believe he did.

signed and sworn to this 24th day of August, 2004.

Sabine Petion
SABINE PETION

Then personally appeared before me the above-name **SABINE PETION** rose and swore that the statements were true to the best of her knowledge and belief.

[Signature]
Notary Public

My Commission Expires: 9/20/2007

